

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Eric C. Wolf, et al.,

Civil No. 07-4934 (DWF/AJB)

Plaintiffs,

v.

Carol Holinka, et al.,

Defendants.

**AMENDED
ORDER ADOPTING REPORT
AND RECOMMENDATION
AS MODIFIED**

Eric C. Wolf, *Pro Se*; Mike Horrell, *Pro Se*; John Trey, *Pro Se*; Robert Weiss, *Pro Se*; Charles Henry, *Pro Se*; Bryon Farrington, *Pro Se*; Ben LaRue, *Pro Se*; James W. Thaelke, *Pro Se*; Edmond Simmons, *Pro Se*; John David Hagensen, *Pro Se*; and William K. Carpenter, *Pro Se*, Plaintiffs.

Michael Lee Crews, *Pro Se*, Intervenor Plaintiff.

Jeffrey Michael Sweesy, *Pro Se*, Movant.

The Court issues this Amended Order to clarify one aspect of the Court's previous Order Adopting Report and Recommendation as Modified (Doc. No. 48) issued on June 18, 2008 (the "June 18 Order"), relating to the objections of Plaintiffs Michael Horrell (Doc. No. 32), John Trey (Doc. No. 33), Robert Weiss (Doc. No. 34), James W. Thaelke (Doc. No. 35), Edmond Simmons (Doc. No. 36), Charles Henry (Doc. No. 37), Ben LaRue (Doc. No. 40) and Eric C. Wolf (Doc. No. 47) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, recommending that: (1) the original and amended applications for leave to proceed *in forma pauperis* ("IFP"), which have been filed by Plaintiffs Mike Horrell, Ben Larue, John Trey, Robert Weiss,

James W. Thaelke, Charles Henry, Bryon Farrington,¹ Edmond Simmons, William K. Carpenter,² and John D. Hagensen be denied; (2) all claims presented in this action by Plaintiffs Mike Horrell, Ben Larue, John Trey, Robert Weiss, James W. Thaelke, Charles Henry, Bryon Farrington, Edmond Simmons, William K. Carpenter, and John D. Hagensen, be dismissed without prejudice, and these Plaintiffs be removed from this action; (3) the motion to intervene filed by Michael Lee Crews be denied; and (4) the IFP application filed by Michael Lee Crews be denied as moot.

In its June 18 Order, the Court stated at paragraph 8 that: “The original and amended applications for leave to proceed *in forma pauperis*, which have been filed by Plaintiffs Mike Horrell, Ben Larue, John Trey, James W. Thaelke, Charles Henry, Bryon Farrington, Edmond Simmons, William K. Carpenter, and John D. Hagensen, (Doc. Nos. 7-15, 18-24), is **DENIED.**” The document numbers listed, however, should have been Document Numbers 7-15 and 18-23. Document Number 24 should not have been listed because the Court granted the Amended IFP application of Robert Weiss. Paragraph 8 below has been corrected.

As noted in the June 18 Order, the Court conducted a *de novo* review of the record pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for

¹ Farrington is listed in some records in the docket as “Bryon Farrington” and in other records as “Byran Farrington.” The Court adopts the spelling of Farrington’s name used in the docket in connection with his IFP application.

² The docket and the Report and Recommendation reflect that Carpenter did not file an IFP application. Carpenter did, however, file a Motion for Leave to Proceed *in forma pauperis* and, therefore, this Court will decide this matter as though Carpenter filed an IFP application.

the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiffs' objections. Additionally, following the entry of the Report and Recommendation, Plaintiff Robert Weiss filed an amended IFP application and paid a partial filing fee, and Jeffrey Michael Sweesey filed a Motion to Join this action.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Michael Horrell's objections (Doc. No. 32) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.
2. Plaintiff John Trey's objections (Doc. No. 33) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.
3. Plaintiff James W. Thaelke's objections (Doc. No. 35) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.
4. Plaintiff Edmond Simmons' objections (Doc. No. 36) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.
5. Plaintiff Charles Henry's objections (Doc. No. 37) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.
6. Plaintiff Ben LaRue's objections (Doc. No. 40) to Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008, are **DENIED**.

7. Magistrate Judge Arthur J. Boylan's Report and Recommendation dated February 20, 2008 (Doc. No. 29), is **ADOPTED**, subject to the following modification: the partial filing fee paid by Robert Weiss is accepted and his IFP application granted.

8. The original and amended applications for leave to proceed *in forma pauperis*, which have been filed by Plaintiffs Mike Horrell, Ben Larue, John Trey, James W. Thaelke, Charles Henry, Bryon Farrington, Edmond Simmons, William K. Carpenter, and John D. Hagensen, (Doc. Nos. 7-15, 18-23), is **DENIED**.

9. All of the claims presented in this action by Plaintiffs Mike Horrell, Ben Larue, John Trey, James W. Thaelke, Charles Henry, Bryon Farrington, Edmond Simmons, William K. Carpenter, and John D. Hagensen, are **DISMISSED WITHOUT PREJUDICE**, and these Plaintiffs be removed from this action.

10. The motion to intervene filed by Michael Lee Crews, (Doc. No. 27), is **DENIED**.

11. The application to proceed *in forma pauperis* filed by Michael Lee Crews, (Doc. No. 28), is **DENIED AS MOOT**.

12. Movant Jeffrey Michael Sweesy's Motion to Join (Doc. No. 41) is referred to Magistrate Arthur J. Boylan for consideration.

Dated: June 25, 2008

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court